IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6671 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARJUNSING BALDEVSING RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6671 of 2001
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MR K.T.DAVE, AGP for Respondents No. 1-3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 25/10/2001

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution of India, the petitioner/detenue who has been detained by the District Magistrate, Ahmedabad, vide order dated July 30, 2001 (Annexure-A to the petition) in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the P.B.M. Act' for short hereinafter), has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order or direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that on the basis of the information received by the office of Food & Civil Supplies Controller, Ahmedabad City, on May 7, 2001 raid was conducted at two shops situated near the shop of Shikharchand F.Jain, opposite to Balva shop, Amraiwadi, Shivanandnagar, Ahmedabad. During the course of inspection, stock of 2160 liters of blue coloured kerosene and other items were found out. At the time of inspection, the petitioner confessed that the stock of kerosene belongs to him. No purchase bill was produced at the time of inspection. It was stated by the petitioner that some persons are bringing the blue coloured kerosene in carbas on bicycle but names of those persons not disclosed. It was also stated that the petitioner was selling the said blue coloured kerosene purchased at the rate of Rs. 9/- and selling at Rs. 10/- to persons having scooter, rickshaw but names of those persons not disclosed. Samples of kerosene were drawn and sent for laboratory testing. As per the report of laboratory, presence of blue colour was found in the sample of kerosene. The detaining authority recorded that the petitioner is not a licence holder, however, purchased unauthorisedly the stock of blue coloured kerosene, stored it and sold illegally and thereby acted in a manner prejudicial to the maintenance of supply of blue coloured kerosene for his personal gain and thereby committed breach of Clause-3 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and Clause-3 of the Kerosene (Restriction on

Use and Fixation of Ceiling Price) Order, 1993 and thereby committed breach of section 3 of the Essential Commodities Act, 1955.

3. Though the petitioner has challenged the order of detention on various grounds, Mr. H.R.Prajapati, learned advocate for the petitioner has restricted his arguments to the effect that there was a delay not only on the part of the detaining authority but also on the part of the State Government and the Central Government in considering the representation made by the petitioner/detenu. He, further contended that the detenu has sent the representation dated August 1, 2001 by RPAD to the detaining authority which was received by the office of the detaining authority on August 2, 2001. The detaining authority himself received the same on August 7, 2001 and the said representation was rejected by the detaining authority on August 9, 2001. Therefore, there is a gross delay on the part of the detaining authority in considering the representation. He further contended that the detaining authority has sent the said representation to the State Government on August 9, 2001 which was received by the Special branch of the State on August 13, 2001 and rejected on August 16, 2001, therefore, there is a delay on the part of the state machinery also. So far as the representation sent by the Central Government Government by the petitioner/detenu is concerned, Mr. H.R.Prajapati, learned advocate for the petitioner contended that petitioner/detenu made a representation on August 10, 2001 to the Ministry of Central Government which was received on August 14, 2001 and ultimately it was rejected on August 20, 2001, therefore, there is a delay on the part of the Central Government also in considering the representation. He, therefore, contended that there is abnormal delay on the part of all the authorities which would vitiate the continued detention of the petitioner/detenu. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution. He, therefore, urged to quash and set aside the order of detention by allowing the petition and setting the petitioner/detenu at liberty forthwith. To buttress the aforesaid submissions, Mr. Prajapati has cited the following decisions on the question of delay:

i) RAJAMMAL V. STATE OF T.N. AND ANOTHER, (1999) 1 SUPREME COURT CASES 417

ii) KAMLESHKUMAR ISHWARDAS PATEL V. UNION OF INDIA AND OTHERS, 1995 SUPREME COURT CASES (Cri) 643

iii) RAGHAVENDRA SINGH V. SUPDT., DIST. JAIL, KANPUR, AIR 1986 SC 356

iv) KANJIBHAI HARJIBHAI RABARI V. STATE OF GUJARAT AND OTHERS, 1995 (2) GLR 1596

v) DILAWAR GULABBHAI SHAIKH V. COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, 1994 (2) GLR 1414

4. Mr. K.T.Dave, learned AGP appears for respondents Nos. 1, 2 & 3 and contested the petition by filing two affidavits in reply- one sworn by P.G.Vyas, Deputy Secretary to the Government, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar and the other sworn by I.K.Srinivas, District Magistrate, Ahmedabad. Ms P.J.Davawala, learned counsel appears for respondent no. 4, Union of India, and contested the petition by filing affidavit in reply sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

5. The sum and substance of the contents of the affidavit in reply filed by all the three authorities is that there is no delay on the part of any of the authority in considering the representation made by the petitioner/detenu. On the contrary, representation was considered promptly without any delay and as expeditiously as possible by all the authorities.

6. Besides this, Mr. K.T.Dave, learned AGP contended that in the present case, though in the grounds of detention specific address of the authorities to whom representation can be made was given to the petitioner/detenu, he has not sent his representation to that address. The representation dated August 1, 2001 was received by the detaining authority on August 7, 2001 and the same was considered and rejected immediately on August 9, 2001, therefore, Mr. K.T.Dave, learned AGP has contended that there is no delay on the part of the detaining authority in considering the representation. The representation sent by the petitioner/detenu not to the address mentioned in the grounds of detention itself suggest that the petitioner/detenu has sent the representation on the wrong address and, therefore, he cannot take the advantage of his own wrong inspite of the specific instructions given in the grounds of detention to send the representation at the address mentioned in the grounds of detention. So far as the representation received by the detaining authority on August 7, 2001 is

concerned, delay of two days has been explained by the detaining authority and the delay of two days cannot be considered as delay on the facts and circumstances of this case. He, therefore, urged to dismiss the petition as there is no delay on the part of the detaining authority in considering the representation. He, further contended that so far as the contention with respect to delay caused by the State authority is concerned, that is explained in the affidavit in reply filed by P.G.Vyas wherein it is stated that the said representation was received by the office on August 14, 2001 and, August 15, 2001 being the holiday, immediately on the next date representation was considered and rejected. Therefore, according to him there is no delay on the part of the State machinery.

7. Ms. P.J.Davawala, learned advocate for the petitioner contended that it is true that the representation dated August 10, 2001 made by the petitioner/detenu to the Minister of Central Government, was received by the Central Government on August 14, 2001 but since the representation was in vernacular language it was requested to the State Government to furnish English version of the representation which was received by the State Government on August 16, 2001. The State Government was reminded on August 23, 2001 and ultimately on August 27, 2001 said English version was received by the Central Government and immediately on the same day it was considered and rejected, therefore, there is no delay on the part of the Central Government. She, therefore, urged to dismiss the petition.

8. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the affidavit in reply filed by the contesting respondents and the impugned orders and the decisions cited at the bar.

9. On having perusal of the relevant papers it is seen that representation dated August 1, 2001 which was made to the detaining authority by RPAD was received by the office of the detaining authority on August 2, 2001 whereas the said representation was received by the detaining authority on August 7, 2001 and it was rejected on August 9, 2001 and thereafter, the same was forwarded to the State Government by the detaining authority on the same date.

10. The contention that the petitioner/detenu has not

sent the representation at the address given in the ground of detention, petitioner cannot take advantage by saying that detaining authority has received the same on August 7, 2001 though it has been received by the office of the detaining authority on August 2, 2001, has no substance. There is no manner of doubt that the said representation was addressed by the petitioner/detenu to K.Srinivas, District Magistrate, Ahmedabad. As per the address given in the grounds of detention, it is stated that the representation should have been addressed to District Magistrate, Ahmedabad, C/o Food and Civil Supplies Control Office Second Floor, Handloom House Building, Asram Road, Navarangpura, Ahmedabad.

11. A similar question arose before the Division Bench of this Court in the case of DILAWAR GULABBHAI SHAIKH's case (supra). In the said case as per the grounds of detention the detenu is required to send his representation to the detaining authority at the following address:

The Police Commissioner,
Ahmedabad City,
Office of the Police Commissioner (P.C.B.),
Shahibaug, Ahmedabad

The aforesaid address is the correct address on which the representation ought to have been addressed. In the present case the representation is addressed at the following address:

The Police Commissioner,
Ahmedabad City,
Office of the Police Commissioner,
Shahibaugh, Ahmedabad

Therefore, division Bench observed that the words 'P.C.B.' which ought to have been mentioned after the 'office of the Police Commissioner' are found to be missing and since those words are not mentioned it has gone altogether to a different branch of the office of Police Commissioner. The Division bench has further observed that conduct of the office of the Police Commissioner, Ahmedabad in dealing with representation which is reached the office of the Police Commissioner on the very next day is reprehensible and makes a travesty of Constitutional obligation and we very strongly condemn and denounce the delay caused in considering the representation. Our denunciation of delay caused in considering the representation must necessarily result into declaring the continued detention of detenu to be

illegal, null and void.

12. Applying the aforesaid principles laid down by this Court to the facts of the present case, in the instant case the petitioner/detenu has sent the representation with the name of the detaining authority i.e., by addressing Sri K.Srinivas, District Magistrate, Ahmedabad which was received by his office on August 2, 2001. Therefore, it can be said that it was rightly sent to the detaining authority.

13. A similar view is expressed in the case of KANJIBHAI HARJIBHAI RABARI's case (supra). In the said case this Court has said that the Chief Minister being the Home Minister under the Rules of Business, a representation made against the order of detention to the Chief Minister cannot be said to be no representation or made to a wrong authority simply because it is not made to the Deputy Secretary, Home Department.

14. In the case of Smt. GRACY V. STATE OF KERALA AND ANOTHER, AIR 1991 SC 1090, Supreme Court has held that dual obligation of consideration by Advisory Board and independently by detaining authority, the representation is addressed to detaining authority or to Advisory Board is immaterial.

15. In the case of MOOSA HUSEIN SANGHAR V. THE STATE OF GUJARAT AND OTHERS, JT 1993 (1) SC 44, the Supreme Court has said that representation addressed to the Advisory Board and not to the State Government, did not absolve the State Government from the constitutional obligation flowing from Article 22(5) to consider the representation. The mode of address is only a matter of form which cannot whittle down the requirement of the Constitutional mandate in Article 22(5).

16. There is no explanation in the affidavit in reply filed on behalf of the detaining authority that though the said representation was received by the office of the detaining authority on August 2, 2001, why it has reached to him on August 7, 2001 and, why there is a further delay of two days in considering the representation and, in the absence of such explanation, I hold that there is a delay of more than 8 days in considering the representation by the detaining authority.

17. Now the question which falls for consideration is, as to whether, delay caused in considering the representation vitiated the continued detention and violated the fundamental rights enshrined in Article

22(5) of the Constitution.

18. In the case of RAJAMMAL V. STATE OF T.N.'s case (supra), the Supreme Court has said that the position therefore is now that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

19. In the case of RUMANA BEGUM V. STATE OF ANDHRA PRADESH AND ANOTHER, 1993 SUPP (2) SCC 341, Supreme Court has held that unexplained and unreasonable delay in disposal of that representation vitiated the detention.

20. Applying the aforesaid principles laid down by the Supreme Court as well this Court, at the cost of repetition be it stated that representation dated August 1, 2001 made by the petitioner/detenu to the detaining authority which in fact was received by the office of the detaining authority on August 2, 2001 remain idle in the office of the detaining authority and there is no explanation why it has been received by the detaining authority on August 7, 2001. There is no further explanation why even after receiving the representation by the detaining authority on August 7, 2001, why it was rejected on August 9, 2001 that is after two days. No convincing and swallowable explanation is forthcoming in the explanation filed by the detaining authority justifying this delay.

21. The petitioner also made a representation to the Central Government on August 10, 2001 which was received by the Central Government on August 14, 2001 and ultimately rejected the same on August 28, 2001. The Central Government tried to justify in its affidavit filed and sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi that they waited for English translation of the representation made by the petitioner/detenu, from the State Government as the said representation was in Gujarati. As per their explanation they waited for translation for 13 days. They could have very well done the translation at New Delhi itself, therefore, the said explanation is also not swallowable and, therefore, there is a reason to believe

that there is a delay of 14 days in considering the representation by the Central Government also.

22. On overall view of the matter, there is a considerable delay in considering the representation made by the petitioner/detenu on the part of the detaining authority as well as on the part of the Central Government and, the infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution and that would render the continued detention bad in the eyes of law.

23. Seen in the above context, the detention order is vulnerable, bad in the eyes of law and therefore liable to be quashed and set aside by allowing the petition.

24. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated July 30, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*